BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

Initial Comments of TCA, Inc.

I. Introduction

TCA, Inc. - Telcom Consulting Associates ("TCA") hereby submits these comments in response to the FCC's Further Notice of Proposed Rulemaking[1] ("FNPRM") regarding reform of the intercarrier compensation regimes. The FCC initiated this proceeding in April of 2001 with the stated purpose to examine all currently regulated forms of intercarrier compensation.

TCA is a consulting firm, performing regulatory, financial and marketing services for over one hundred small, rural LECs throughout the United States. TCA's clients derive a significant portion of their revenues from intercarrier compensation and will be directly impacted by the FCC's actions in this proceeding. These comments address the concerns of TCA's clients.

TCA was a participant in the Expanded Portland Group (EPG)[2] and fully supported the plan presented. TCA is also supportive of the Rural Alliance, and these comments will reflect that support.

II. The Rural Alliance Principles Support and Advance the Commission's Goals for Intercarrier Compensation Reform.

The Rural Alliance ("the RA"), a group of small and mid-size companies serving residents of rural and high-cost areas with advanced communications services, combines two previous

[1] See, in general, In the Matter of Developing a Unified Intercarrier Compensation Regime, *Further Notice of Proposed Rulemaking*, FCC 05-33, CC Docket No. 01-92, adopt. Feb. 10. 2005, rel. Mar. 3, 2005.
[2] See EPG Comprehensive Plan for Intercarrier Compensation Reform, Nov. 2, 2004, (EPG Proposal), attached to Letter from Glenn H. Brown to Marlene H. Dortch, at page 35.

assemblies of carrier seeking to provide a rural voice in the current debate. Both groups, the EPG and the Alliance for Rational Intercarrier Compensation, have previously filed proposals which were discussed by the Commission in the FNPRM.[3] These proposals have been successfully combined into one comprehensive plan for a fair and effective reform of intercarrier compensation.[4] The RA, much like the Commission, calls for intercarrier compensation reform to be based on sound policy principles. The RA's principles support and advance the goals of any reform of the current regime, as set out by the Commission in the FNPRM.[5] The Commission detailed three specific goals, including: 1) any reform "should encourage the efficient use of, and investment in, telecommunications networks, and the development of efficient competition;"[6] 2) realization of the universal service mandate, as set out in the Telecommunications Act of 1996, "**must** be a consideration in the development of any intercarrier compensation regime;"[7] and 3) "…any new intercarrier compensation approach must be competitively and technologically neutral."[8] The RA's plan promotes these laudable goals.

The RA bases its plan on several principles, including:

1. Intercarrier Compensation Rates Should Be Unified and Cost-Based;
2. All Providers Must Pay For the Use of Network Facilities;
3. Any Revenue Replacement Support Must Only be Based on Net Revenue Losses;
4. All Providers Benefiting From Network Connections Should Contribute to the Universal Service Fund; and
5. There is a Need for Oversight of Interconnection to the Internet Backbone Networks and Infrastructure-based Universal Service Support.

These principles, when taken as a whole, will allow the Commission to progress to its own goals for intercarrier compensation reform.

The RA's principles encourage efficient use of and investment in all current networks. By setting rates based on the costs of the networks, there is acknowledgement that all networks,

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[3] FNPRM, ¶¶ 45-50.
[4] See in general, Notice of Ex Parte Presentation from Glenn H. Brown filed May 3, 2005 in CC Docket 01-92
[5] FNPRM, ¶¶ 31-33.
[6] FNPRM, ¶ 31.
[7] FNPRM, ¶ 32 (emphasis added), (footnote deleted).

regardless of the underlying technology, generate expenses and require investment. By requiring that all providers that benefit from a network pay proper compensation, the Commission will allow the market to send correct economic signals and efficient competition will develop. "Competition" based on a set of faulty economic signals, as today's Voice over Internet Protocol (VoIP) market has become, is ineffective and does nothing to promote the goals of the 1996 Act.

A. Intercarrier Compensation Rates Should be Unified and be Cost-Based

One common theme that runs through all advocated positions in this proceeding is that the current divergent intercarrier compensation (ICC) rates must be unified. As the Commission has properly noted, one of the overall goals of this proceeding should be to adopt a unified ICC regime, including what is likely to be the difficult task of reforming intrastate access charges. The RA properly recognizes this vital feature of any new ICC regime.

In addition to being unified, rural LEC ICC rates should also be based on actual costs of providing vital access and interconnection services to retail providers. Rural LEC ICC rates must be based on embedded cost, and designed to recover costs related to today's predominantly circuit switch-based public communications network, with proper and substantial recognition given to cost recovery in tomorrow's network technology of choice.

B. Current Intercarrier Compensation Rules Must Be Enforced

Today's ICC regime has developed over time and as a result consists of several mismatched policies in need of correction. Part of this necessary correction must include clear and unequivocal direction from the Commission regarding the proper identification of traffic sent to providers' networks. Under the current environment of muddled rules and lax enforcement, many carriers, including transiting providers, deliver traffic to terminating carriers in a form known as "phantom traffic." Phantom traffic, where needed information identifying the originating carrier is absent or altered, is growing at an alarming rate. While some phantom

[8] FNPRM, ¶33.

traffic occurs as a result of carriers committing regulatory arbitrage, such as when toll traffic is improperly routed to hide the origin, some phantom traffic is IP or VoIP traffic, which has no identification to enable billing, even though it transits the Public Switched Telephone Network ("PSTN"). By ensuring that there is a uniform rate, as well as mandating that all traffic terminated on carriers' networks is plainly and properly identified, the Commission will ensure that accurate economic signals are generated, thereby increasing efficient competition.

The RA principles also sustain the Commission's third goal for intercarrier compensation reform – that of competitive and technologically neutrality. It is crucial for the Commission to ensure that, in addition to mandating that all providers benefiting from the network pay for that benefit, proper payment is made, regardless of whether the interconnection is direct or indirect. In this manner, the Commission can be assured that its policy is competitively neutral. As most rural carriers are only directly connected through a RBOC-controlled tandem, indirect connections are crucial, not only in providing universal service, but also in ensuring just compensation for the use of the rural carriers' networks is made. The Commission can meet its goal by endorsing the principles as set out by the RA.

C. The New ICC Regime Must Ensure the Preservation and Advancement of Universal Service.

The Commission was correct to establish the advancement of universal service as a goal of any intercarrier compensation reform. However, most plans before the Commission, including the Commission Staff Analysis appended to the FNPRM,[9] give little consideration to this policy core. The Staff Analysis, which devotes ten pages to the benefits of the Bill and Keep methodology ("B&K"), notes "the need to address the universal service consequences of a bill-and-keep regime,"[10] but addresses this goal of the Commission in two paragraphs. The Commission must "give heavy weight to [its] **statutory obligation** to preserve and advance

[9] FNPRM, Appendix C ("Staff Analysis").
[10] Staff Analysis, p. 110.

universal service…"[11] The RA principles provide the appropriate amount of credence to this significant mandate.

It is important for the Commission to note that universal service is more than simply a pot of money. It is a goal, set by the 1996 Act, that all Americans, regardless of geographic location, should have access to an advanced communications network. This universal network benefits more than simply those who connect; it benefits communications carriers, including alternative carriers such as VoIP and wireless providers, other businesses, and the country as a whole. It is this view of universal service as policy goal, equal in importance to effective competition, that is encompassed by the RA principles. The Commission should, as it has in the past, embrace this view and ensure that any reform of intercarrier compensation includes and advances universal service.

Another key goal of this proceeding will be to ensure the continuation of intercarrier compensation for rural LECs. As noted by the Commission, access charges make up a substantial piece of rural LEC revenues.[12] In order to maintain and advance universal service, the Commission must strike the proper balance between local, ICC, and USF. Any other result will likely doom rural Americans to substandard service and lack of broadband capable facilities. Therefore, the Commission must: 1) ensure the continuation of ICC for rural LECs; and 2) ensure any reductions in rural LEC ICC revenues are properly accounted for in changes to the federal universal service mechanism.

As the Commission will hear from the RA and other parties, any revenue losses created by ICC reform, particularly rate realignment/unification, should be recovered through a combination of increased end user charges, either basic local or the federal subscriber line charge (SLC), and a sufficient and sustainable USF mechanism. For rural LECs, the Commission must ensure the maintenance of universal service through affordable and comparable local rates, and yet must also be concerned about an unsustainable increase in the demand on federal USF mechanisms. One way to accomplish this delicate balancing act is to adopt a benchmark local rate level that

[11] FNPRM, *Separate Statement of Commissioner Jonathan S. Adelstein* (emphasis added)
[12] FNPRM, ¶ 108

would be considered in the calculation of any new rural LEC USF support related to ICC revenue reductions.[13] In this way, the Commission could recognize the efforts made in some states to rebalance local and state access rates[14] and achieve more uniformity in nationwide local rates, as well as reduce the pressure of ICC reform on current USF mechanisms. Rural LECs that have local rates below the benchmark should be given the option of raising local rates, but such a benchmark would be imputed into the USF necessary as a result of ICC rate reductions. Conversely, if a rural LEC has local rates above the established benchmark level, it should be able to lower rates to the benchmark level and draw additional USF in return. The determination and application of the local rate increase mechanism should be as simple and efficient as possible. This means a simple and reasonable local rate benchmark determination,[15] and an expeditious process for raising local rates where necessary.[16]

Considering that any new ICC regime will likely increase the requirements of the federal universal service mechanism, the Commission must move expeditiously to solve current problems associated with the USF contribution mechanism. The facts prove that the base of contributions, interstate revenues, is shrinking as alternative technologies develop and convergence continues. In 2001, the USF contribution basis, averaged for the year, was approximately $30.5 million.[17] This generated an average USF contribution factor of 6.8%.[18] In three years, the USF contribution basis has been almost halved: 2004's average contribution basis was $18.699 million with an average USF factor of 8.8%.[19] As the Commission is aware, the current USF contribution factor has risen to 11.1% with little sign of stopping.

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[13] For example, see the EPG Plan at pp. 23-26 and the ARIC Plan at pp. 61-66.
[14] In Kansas, for example, rural LEC rate rebalancing has resulted in $12 average local residential rates, state access rates at or around NECA rate levels, and state universal service support has changed to recognize revenue increases or reductions.
[15] *See* EPG Plan at pp. 23-24. Contrast this with the latest NARUC *Ex Parte* filing, filed May 18, 2005, CC Docket 01-92, p. 8.
[16] It would be impossible to implement any ICC reform plan that includes local rate increase if every rural LEC opting to raise rates to the benchmark level had to undergo, for example, a rate case.
[17] The 2001 quarterly contribution basis were: 1Q - $40,925,433; 2Q - $41,014,700; 3Q - $20,141,047; and 4Q - $19,597,023. 3Q 2001 marked a change in the filings of revenues on which the basis is generated. Source: Universal Service Administrative Corporation quarterly filings, accessed at www.universalservice.org.
[18] *Ibid*.
[19] The 2004 quarterly contribution basis were: : 1Q - $18,194,138; 2Q - $19,100,887; 3Q - $18,707,211; and 4Q - $18,095,414. Source: Universal Service Administrative Corporation quarterly filings, accessed at www.universalservice.org.

III. Bill and Keep Regimes Are Based On Faulty Assumptions.

The Commission it is currently considering many plans and proposals based on the theory of bill and keep. Under a bill-and-keep arrangement, there are no intercarrier charges and accordingly, each carrier is required to recover the cost of local facilities from its own customers. Many of the plans and the Staff Analysis assert that a bill-and-keep regime would provide technological and competitive neutrality, assist in aiding a more efficient deployment of network investment and provide regulatory relief. These arguments ignore at least one basic tenant of intercarrier compensation – cost causation and the fact that retail service providers use rural LEC networks to provide service to retail customers. Bill–and-keep regimes, and ICC plans without originating access provisions, ignore the important difference between connections involving two directly-connected retail networks, to which reciprocal compensation applies, and those between wholesale and retail networks, to which access charges apply.

While a voluntary bill-and-keep regime maybe appropriate in certain circumstances, mandatory imposition of this system will prove devastating for many rural LECs and the customers they serve. For example, directly-connected carriers with networks of comparable cost, exchanging comparable amounts of traffic over limited transport distances would probably benefit from a bill-and-keep arrangement. However, this does not describe the current situation of many rural LECs. Due to the sparsely populated areas served by rural LECs, the cost of their networks, on a per customer basis, far exceeds that of urban LECs. Furthermore, their transport distances are typically far greater than those of urban providers and they are often indirectly connected, rather than the direct interconnection assumed by a bill-and-keep regime.

The Staff Analysis argues that the current regime lacks fairness because it requires the calling party to incur all the costs of the call, while the called party incurs none. Accordingly, because both parties benefit from the call, each should absorb a portion of the cost. This assertion has long been debated before the Commission, however, the assertion assumes that the price of interconnection between carriers somehow accounts for end-user value. It does not; Interconnection compensation should allow carriers the opportunity to recover the cost of originating and terminating traffic. Bill-and-keep regimes incorrectly sets these prices at zero, relieving carriers and regulatory authorities from properly determining the proper costs of the transaction.

While the allocation of joint costs is a difficult task, it is not a valid reason to excuse regulators from their responsibility. Regulators must find an equitable method for ensuring that all, customers and carriers, that benefit from the network pay a reasonably comparable portion of the costs of that network. Allocation of common costs is a key component of the solution. However, when carriers can mutually agree that a bill-and-keep arrangement is appropriate, regulators should cede this responsibility to the carriers.

Efficiency should not be the *primary* goal of an intercarrier compensation system. If efficient deployment of network resources were the sole goal of telecommunications policymakers, customers in many high cost rural areas would simply not be provided **any** service. TCA agrees that eliminating billing and collecting of other carriers as envisioned by a bill-and-keep regime is more administratively efficient. Taken to the extreme, eliminating all billing and collecting would be even more administratively efficient. However, carriers may find it difficult to remain in business, despite the tremendous increase in administrative efficiency.

IV. Several Plans and Proposals Fall Short of Meeting Reasonable ICC Reform Goals

As noted in the FNPRM, several parties either provided formal plans or proposals containing discussion about the new ICC regime. TCA discussed above what it believes to be the most dangerous possible outcome of this proceeding – bill and keep – and will now address two of the other plans submitted to the Commission.

A. NARUC's Intercarrier Compensation Proposal

The National Association of Regulatory Utility Commissioners' (NARUC) latest proposal,[20] while not officially included as one of the plans on which the Commission requests comment, bears consideration and analysis. NARUC's proposal contains well-developed and rational ideas, including the following:

[20] *See* Ex Parte Notice and Presentation, filed May 18, 2005 in CC Docket 01-92 (*NARUC Ex Parte*)

- ICC rates should be unified and be cost-based.
- Termination rates that recognize the higher cost of serving rural areas.
- LECs should be permitted to convert the per-minute termination charges to equivalent capacity charges at any time.
- No LEC should be required to terminate calls if the call records do not permit billing for terminating access (i.e., the "phantom traffic" issue)
- ICC charges should apply to VoIP when such calls make use of the public switched network for origination and/or termination.

TCA commends the substantial work apparent in NARUC's ICC proposal; however, there are certain elements of the proposal that do not meet the goals set by the Commission for this proceeding.

NARUC appears to have struggled mightily with whether access charges should continue to apply to originating traffic.[21] NARUC eventually decided to include, as an alternative, a plan for originating traffic that recognizes the continuing need of rural LECs to recover costs related to such traffic. The NARUC originating access proposal properly recognizes the "retail service provider pays"[22] concept in that as long as equal access obligations are placed on rural LECs, there will be a necessity for originating access charges. TCA urges the Commission, and NARUC, to include originating access, not as an alternative, but as the solitary way to ensure rural LECs are adequately compensated for use of their networks.

NARUC also proposes to substantially change the way federal universal service support is distributed.[23] The state allocation mechanism (SAM) contemplated by NARUC would have the FCC provide state-allocated USF support to "state accounts," which the state commissions would apparently spend on universal service in any manner they chose. TCA has several concerns with NARUC's proposal, including but not limited to: 1) the apparent capping of the total USF available in each state based on the support paid in 2004; 2) an unnecessary administrative process added to an already complicated procedure; and 3) state commissions

[21] NARUC *Ex Parte*, Appendix C, pp. 2-3.
[22] See ARIC Plan, p. 33.
[23] NARUC *Ex Parte*, Appendix, p. 11.

having excess authority over federal funds. TCA recommends the Commission defer action on NARUC's SAM, and other similar USF overhaul suggestions, to the universal service docket.

B. Western Wireless Intercarrier Compensation Reform Plan

Western Wireless (WWC) offered what it termed a "plan" in December, in which it recommends the Commission, among other things, adopt a bill-and-keep regime, and "right-size" federal support mechanisms.[24] WWC, a pioneer in the wireless competitive ETC arena, has provided the Commission with a self-serving "plan" that does nothing more than shift as much revenue as possible away from rural LECs to itself. Taken in total, WWC's plan should be ignored by the Commission.

As is usual with WWC-filed proposals, the most harm resulting from its plan would fall to customers of rural LECs. WWC claims that carriers should be "self reliant," meaning carrier network costs should be recovered from the carrier's own customers. The record is replete with evidence of the utter unreasonableness of forcing a bill-and-keep regime on rural LECs. It is not surprising to see WWC recommend such an approach – either rural LECs will be forced to improperly recover interconnection costs from end users, accomplished by raising local rates, or USF support will be made available for lost access revenues. Either result benefits WWC – improper recovery of interconnection costs in local rates will artificially raise rural LEC local rates, tilting the competitive playing field in WWC's favor, and higher USF will automatically accrue to WWC, in areas where it has been designated a CETC, under today's rules.

WWC's proposal to "right size" the USF contains inadequate detail upon which to comment. However, WWC stated in its *Ex Parte* presentation that individual carriers may receive more or less support than in the past. It takes little imagination to determine which carriers will receive less support and which will receive more. Rural LEC customers will suffer under WWC's plan as the increased support WWC receives will go straight to its bottom line, and will not go to providing advanced services as the rural LECs have committed to do. WWC's proposal should be rejected by the Commission in this proceeding.

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[24] Western Wireless *Ex Parte* presentation, dated December 1, 2004

V. The Commission Must Look to the Future

Unfortunately, decisions made in this proceeding are likely only the beginning of a long process. As the Commission is well aware, several parties have pointed out the fact that technology will eventually drive intercarrier compensation, and indeed other, key telecommunications policies. Therefore, careful consideration must be made for a transition to tomorrow's ICC regime. The issues being discussed today undoubtedly will not be the same as will be debated in the next round of ICC reform. However, TCA firmly believes that some form of ICC will always be prudent, reasonable, and necessary for the continued advancement of universal service and survival of rural America. Decisions made in 2005 or 2006 should not forestall decisions to be made in 2010.

TCA supports a transition to an ICC regime based on something other than minutes of use (MOU). The efficacy of MOU-based ICC in ensuring rural LECs have the resources with which to continue vital telecommunications investment is waning. Therefore, the FCC should look to the future in deciding how to act today – the major goal for the Commission in this docket should be to begin that transition. Several parties have advanced alternative mechanisms that either replace or supplement today's largely circuit switched-bases system.[25] The Commission should carefully consider these proposals, and determine how to proceed – either design an ICC regime with tomorrow's technology in mind, or initiate an investigation into how best to ensure ICC decisions made today do not decimate universal service in rural America. NARUC suggests a separate proceeding, while Home Telephone/PBT recommends immediate adoption of an alternative mechanism. Either way, the Commission must recognize the need for change and act appropriately.

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[25] See EPG Proposal; *Ex Parte* of Home Telephone Company, Inc. and PBT Telecom, dated November 2, 2004; and NARUC Proposal

VI. Conclusion

TCA commends the parties presenting plans and proposals in this proceeding – substantial time, money, and effort have been expended in attempting to arrive at a new ICC regime. For rural LECs, the issues are clear – ICC must continue in a rational manner, users of rural LEC networks must pay, and USF policy must recognize the importance of any changes made to rural LEC ICC policy. TCA supports the efforts of the RA in this regard, and urges the Commission to give great weight to its input in this proceeding.

Respectfully submitted,

[electronically filed]

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